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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	)	WT Docket No. 96-162

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its reply comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.[1/] Cox submits these comments to refute yet again the unfounded assertions of the incumbent local exchange carriers ("LECs") that structural safeguards are unnecessary to prevent LEC anti-competitive conduct. What little competition there is in the local exchange market is far too weak to constrain incumbent behavior, and nonstructural safeguards have proven ineffective in controlling LEC abuses.

Consistent with the statutory framework of the Telecommunications Act of 1996,[2/] competitive safeguards are necessary any time an incumbent LEC enters a related competitive business. Comments filed in this docket and in others amply demonstrate the continued need for strong, effective safeguards for incumbent LEC provision of in-region commercial mobile radio services ("CMRS"). Structural safeguards are necessary and must remain in place until actual,

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1/ See, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, WT Docket No. 96-162, GEN Docket No. 90-314, FCC 96-319 (released August 13, 1996) (the "Notice").

2/ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (the "1996 Act").

facilities-based competition is established in the local exchange market. Structural separation, with enhanced accounting, customer proprietary network information ("CPNI") and joint marketing regulations, remains the best method of preventing LEC abuse of competitive markets.

I. LEC CLAIMS THAT FRIENDLY COMPETITION IS AT HAND ARE NOT CREDIBLE.

Despite LEC claims to the contrary, LEC abuses of market power in both the wireline and wireless markets continue to occur under a regime of non-structural safeguards. Competitors are dependent on incumbent LEC essential facilities, and the incumbent LECs have powerful incentives to forestall competition. The LEC-supported Eighth Circuit stay of the Commission's Local Competition Order[3/] has already slowed progress towards reaching interconnection agreements. Without interconnection agreements based on application of reasonable rules, robust competition will not occur. Actual well established competition is the only substitute for safeguards.

A. The Eighth Circuit's Stay Order Creates Uncertainty and Will Delay Competition.

In their comments the LECs purport to support the Commission's Local Competition rules. Arguing that additional safeguards are unnecessary, the LECs state that "the seventy pages of new rules, which govern in detail the manner in which LECs must interconnect, provide

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3/ See First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, released August 8, 1996 ("Local Competition Order").

ample safeguards to detect and address potential anti-competitive conduct."[4/] Before the Eighth Circuit, however, these same LECs claim that the rules are "arbitrary, capricious, and otherwise contrary to law."[5/] Something is awry here; the LECs have told the Eighth Circuit that those very rules that "provide ample safeguards" are also unlawful and that the Local Competition Order should be "vacated, enjoined and set aside."[6/] The LECs should not have it both ways.

At date of enactment the Local Competition rules would not have obviated the need for LEC in-region CMRS safeguards; however, once fully implemented, the resulting competition would have obviated the need for further safeguards. The Eighth Circuit's decision to stay the pricing and "most favored nation" portions of the rules creates further uncertainty and will delay the entry of new carriers into the local exchange market. Competitive delay is a monopolist's best friend, and without pricing rules in place, incumbent LECs have no incentive to reach prompt agreements with competitors, and the states are left with no guidelines to use in their arbitrations. Further, the stay of the "most favored nation" rules precludes CMRS providers from receiving nondiscriminatory access to more favorable interconnection provisions from approved interconnection contracts.[7/]

The Eighth Circuit order gives incumbent LECs new hope that the court will vacate all or part of the Local Competition rules, thus beginning a new round of comments and court appeals.

4/ Comments of Bell Atlantic Corporation and NYNEX Corporation at 18 (citation omitted).

5/ Bell Atlantic Corp., BellSouth Corp., and Pacific Telesis Group v. FCC, Case No. 96-1318 (D.C. Cir. Sept. 6, 1996) Petition for Review filed by Bell Atlantic Corp., BellSouth Corp. and Pacific Telesis Group at 1.

6/ Id.

7/ See 47 C.F.R. § 51.809 (stayed by the Eighth Circuit).

The apparent success of the LEC motion practice strategy to have each state decide anew each regulatory issue relating to local exchange competition creates additional costs and uncertainty for new entrants. Given the current state of the market, the incumbent LECs will maintain their market power for the foreseeable future. Strong rules, including structural separation, for LEC provision of in-region CMRS, are and will be necessary until actual competition is in place.

B. LEC Abuses of Their Market Power Are Well Documented, Especially in Non-Structurally Separate Markets.

LEC claims that the Commission has "no evidence" of LEC market power abuses on which to base a finding that Section 22.903 structural separation remains a viable and necessary safeguard for incumbent LEC provision of in-region CMRS activities are baseless. Non-LEC comments have provided evidence of substantial problems that have surfaced during the Computer III nonstructural safeguards regime. Cox will not waste time here repeating the lists filed by other parties, nor will Cox detail the incumbent LEC abuses it has previously brought to the Commission's attention.[8/] Attached as Appendix A to these reply comments, however, is a copy of the Reply Comments of Cox Enterprises, Inc. filed by Cox in the Commission's Computer III Further Remand Proceeding.[9/] In its Reply Comments Cox details why the nonstructural safeguards adopted in the Computer III order were insufficient to protect against incumbent LEC abuse, and discusses the unrefutable evidence uncovered by the Georgia Public

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8/ It is interesting to note, however, that Radiofone, a cellular operator in Louisiana, provides detail in its comments about its long pending formal complaint against BellSouth. Radiofone has alleged discriminatory interconnection and roaming practices and predatory pricing. See Comments of Radiofone at 2-3.

9/ See Reply Comments of Cox Enterprises, Inc., Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20 (filed May 19, 1995) (attached as Appendix A).

Service Commission that BellSouth engaged in a "virtual catalog" of different ways an incumbent LEC can abuse its market power. That the incumbent LECs today still refuse to acknowledge these incidents occur is a testament to arrogance bred by years of monopoly power. The Commission must refuse to be lulled by the incumbent LEC siren song that all is well, because these assertions are not based on fact. The fact that these monopoly abuses took place under the state jurisdiction (considered to be the LECs' "home turf"), and those jurisdictions are now left to carry out congressional intent with no Commission guidance at this point, should be particularly of concern to the Commission.

C. Nothing In the Record Indicates that Market Conditions Have Changed or Will Change In the Near Future.

LEC attempts to argue that competition in the wireless market negates the need for safeguards are misplaced; actual, facilities-based competition in the wireline local exchange market must be in place before any safeguards are lifted. Everything Cox told the Commission in 1995 in the Computer III Further Remand Proceeding regarding incumbent LEC market power remains true today: Incumbent LECs still control essential facilities, and those facilities remain the only way to reach residential and most business customers. As the Commission recognized in the Notice, "further regulatory oversight and intervention will be needed for some time in the future in order to prevent LECs from abusing their position of control over interconnection to the public switched telephone network."[10/]

10/ Notice at ¶ 34.

In the Notice the Commission asked the LECs to provide data on the relative benefit of integrated operations other than those related to joint marketing.[11/] The LECs have failed to do so. Instead, they misrepresent the current state of LEC market power in an attempt to convince the Commission that the burden lies with the Commission to prove that structural separation is still required.[12/] Nothing in the record or the law supports the LEC position; indeed, the Commission cannot eliminate the protective power of structural separation under Section 22.903 absent a finding that Section 22.903 is no longer the best regulatory safeguard available to forestall anti-competitive activity.[13/] As the record shows that market conditions have not changed significantly since structural separation of BOC cellular activity was put in place, and because the LECs have failed to place anything in the record other than rhetoric, the Commission has no basis to eliminate Section 22.903. Indeed, expansion of Section 22.903 to all incumbent LEC in-region CMRS activities is the only course of action supported by the comments.

11/ Notice at ¶ 52.

12/ See, e.g., Comments of Bell Atlantic Corporation and NYNEX Corporation at 9; Comments of U S West, Inc. at 5-6.

13/ Bell Operating Company ("BOC") claims that the Telecommunications Act of 1996 somehow eliminates the Commission's ability to retain and expand structural separation for incumbent LEC in-region CMRS activity should be dismissed. See, e.g., Comments of Bell Atlantic Corporation and NYNEX Corporation at 11-12; Comments of BellSouth Corporation at 44-46. The Telecommunications Act of 1996 was about competition and opening markets, and the retention and expansion of structural separation will do just that. If Congress had wanted to eliminate the Section 22.903 structural separation requirements it could have done so. It did not. Congress instead adopted the joint marketing provisions of Section 601 to allow the BOCs to joint market wireless and wireline services. Congress believed that the enactment of Section 601 was sufficient to put the BOCs "on par" with their competitors, and the BOCs have no basis for stating that more regulatory relief is required.

II. STRUCTURAL SEPARATION, ALONG WITH ENHANCED ACCOUNTING, CPNI AND JOINT MARKETING RULES, IS NECESSARY TO PROTECT COMPETITION.

A. The Comments Show that Structural Separation, Expanded to Include All Tier 1 LEC In-Region CMRS, Will Best Protect Competition.

Structural separation, as the comments show, is the best regulatory safeguard available to protect competition because it is the only safeguard intended to prevent abuses before they occur. The LECs claim that nonstructural safeguards are sufficient because "abuses . . . will be readily identifiable, will be reported swiftly by competitors and will receive appropriate and immediate attention at the state or federal level."[14/] This assumes, of course, that competitors have the resources to detect and prosecute LEC abuses, and that they have sufficient staying power to enter and remain in the market even while LEC anti-competitive behavior is taking place. The fact is that many competitors will not enter the market under such adverse conditions, and those that do will do so knowing that the LECs have abused their market power in the past and are likely to do so again. The Commission should not invite the LECs to play a "catch me if you can" game with an industry as important to the success of our nation as telecommunications. Rather, the Commission must adopt regulatory safeguards that best promote competition.

Because structural separation is the best regulatory structure available to detect abuses before they occur or have done irreparable damage to competition, separation requirements should be expanded to all in-region Tier 1 LEC CMRS activity.[15/] No incumbent LEC should

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14/ Comments of SBC Communications at 5.

15/ BellSouth's assertion that the Commission's proposal in the PCS docket to allow LECs to provide both PCS and cellular services directly without a separate subsidiary "was virtually unopposed" is incorrect. Comments of BellSouth Corporation at 3-4. Cox and other

(continued...)

have the regulatory advantage of the ability to abuse its market power at the expense of competitors and the public interest. Section 22.903 structural separation requirements should be retained and expanded to encompass all Tier 1 LEC CMRS activity.

B. Enhanced Accounting, CPNI and Joint Marketing Rules Are Also Essential.

Non-LEC commenters also agree that enhanced accounting, CPNI and joint marketing rules are essential to promote and protect competition. Cox supports the annual audit requirement discussed by AT&T[16/] and the requirement discussed by Comcast that all costs and revenues associated with all incumbent LEC CMRS affiliates be disclosed on a line-item basis.[17/] AirTouch's ideas on CPNI disclosure should also be adopted,[18/] along with AT&T's limitations on joint marketing.[19/]

Of vital importance is the adoption of some mechanism to ensure that the LECs consider and adhere to the Commission's safeguards at all times. Despite LEC claims that they already follow the rules,[20/] LEC employees that are not directly involved in regulatory matters could inadvertently fail to observe Commission requirements if they are not reminded on a frequent

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15/ (...continued)
parties have been urging the Commission for years to adopt structural separation for LEC in-region PCS.

16/ Comments of AT&T at 25-26.

17/ Comments of Comcast Cellular Communications, Inc. at 13-14. See also Comments of Cox Communications, Inc. at 7.

18/ Comments of AirTouch Communications at 7-8. See also Comments of Cox Communications, Inc. at 8.

19/ Comments of AT&T at 20-22.

20/ See, e.g., Comments of Bell Atlantic Corporation and NYNEX Corporation at 18.

basis of their responsibilities and restrictions. Because inadvertent discrimination and cross subsidy is just as harmful to competition as overt discrimination and cross subsidy, Cox supports a requirement that all officers and directors of the incumbent LEC and all of the officers and directors of the wireless separate affiliate certify on an annual basis that they are in compliance with all Commission rules relating to their relationships.[21/] While structural separation should prevent the same LEC employees from having responsibility for both competitive and noncompetitive services, a certification requirement will prompt the LEC and LEC affiliates to remind their employees to observe Commission rules. If the LECs are following the rules, as they claim, they should not object to so certifying on an annual basis.

III. CONCLUSION.

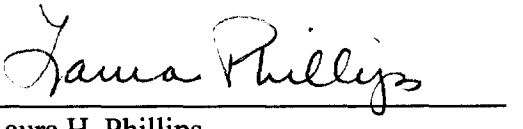
Competition in local telecommunications markets is poised to begin, but it will not have a chance to develop if the Commission does not give it room to grow. Structural separation is necessary to ensure that incumbent LECs do not take advantage of their near- monopoly power in the wireline arena to retard competition in the wireless market. Cox urges the Commission to expand the application of its cellular subsidiary rules quickly so that all wireless competitors can develop their business plans and enter the market as soon as possible. Delay will only help one small group of entities -- the incumbent LECs.

21/ See Comments of Comcast Cellular Communications, Inc. at 10.

For all these reasons, Cox Communications, Inc. respectfully requests that the Commission adopt rules consistent with the positions described herein.

Respectfully submitted,

COX COMMUNICATIONS, INC.



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October 24, 1996

APPENDIX A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Computer III Further Remand Proceedings:	)	CC Docket No. 95-20
Bell Operating Company Provision of	)	
Enhanced Services	)	

To: The Commission

REPLY COMMENTS OF COX ENTERPRISES, INC.

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May 19, 1995

SUMMARY

Two key factors should lead the Commission to conclude that it is vital to restore structural separation for Bell Operating Company ("BOC") enhanced services operations. First, the BOCs control facilities essential to the operations of independent enhanced services providers. Second, the BOCs abuse their control of these essential facilities, to the detriment of competition and the proper development of the enhanced services marketplace. These factors also support imposition of separate subsidiaries any time a BOC enters a competitive market that depends on monopoly telephone facilities.

There can be no doubt that the BOCs have bottleneck control over facilities essential to enhanced services providers. Whenever an enhanced services provider needs telephone services, the only meaningful choice is to go to the local BOC. Moreover, even under the most favorable regulatory and economic conditions, the BOC stranglehold on access to enhanced services customers will remain for the foreseeable future.

The record also shows that the BOCs consistently abuse their control of essential facilities. These abuses include refusals to provide necessary services to enhanced services providers, cross-subsidization, use of customer proprietary network information to "unhook" customers of enhanced services providers and a host of other anticompetitive practices. BOCs have abused their monopolies in every region of the country, across a wide range of services, and new abuses continue to occur. Structural separation is necessary because it makes it harder to engage in these abuses and easier for regulators to detect them. Without structural separation, BOCs' abuses of their market power are sure to continue.

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To: The Commission

REPLY COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.[1/] Cox submits these comments, in large part, to respond to the unfounded assertions of the Bell Operating Companies (the "BOCs") that the nonstructural "safeguards" adopted in the original *Computer III* order have been sufficient to prevent competitive abuse. An accurate review of the results of the *Computer III* regime shows precisely the opposite: BOCs continually discriminate against independent enhanced services providers, refuse to provide necessary services and otherwise abuse their monopoly market position. Thus, because BOCs have both the means and the will to act anticompetitively, the Commission should reinstitute structural separation of BOC basic and enhanced service operations. The Commission also should recognize that structural separation is necessary any time a BOC enters a competitive business.

I. Introduction

Cox is a major diversified media company with significant interests in television, radio, cable television, newspapers and telecommunications. Cox is among the

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1/ *Computer III* Further Remand Proceedings, *Notice of Proposed Rulemaking,* CC Docket No. 95-20, rel. Feb. 21, 1995 (the *"Notice"*).

leaders in the newspaper industry in electronic publishing, and operates electronic publishing ventures in Florida, Georgia and Texas. Most recently, Cox became one of the founding partners in the New Century Network which will make newspaper services widely available online in the near future. Cox also is a leader in the development of new communications technologies and was awarded a pioneer's preference for its innovative use of cable television infrastructure in the provision of personal communications services.[2/]

Since the Commission's original *Computer III* decision, Cox has gained substantial experience in dealing with BOC responses to the needs of enhanced services providers. Cox has sought to obtain basic services necessary to the provision of its enhanced services from BOCs. Cox has participated in the industry forum process described in detail in MCI's comments.[3/] Cox also has participated actively in various state proceedings in Georgia, including the MemoryCall case and the Georgia state ONA proceeding. Thus, Cox has extensive knowledge of BOC behavior under nonstructural safeguards.

Based on this experience, Cox has concluded that nonstructural separation of BOC enhanced service operations is insufficient to prevent anticompetitive behavior. As described in more detail below, there are two key factors that lead to this conclusion. First, the BOCs control facilities that are essential to the operations of enhanced services providers; indeed, enhanced services providers cannot exist without the BOC networks. Second, and notwithstanding BOC protests to the contrary, BOCs abuse their control of essential facilities

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2/ Amendment of the Commission's Rules to Establish New Personal Communications Services, *Third Report and Order*, 9 FCC Rcd 1337, 1345 (1994); *see also* Review of the Pioneer's Preference Rules, *Memorandum Opinion and Order on Remand*, 9 FCC Rcd 4055 (1994).

3/ Comments of MCI at Exhibit B.

to stymie competition in enhanced services. BOCs discriminate against independent enhanced services providers, cross-subsidize their enhanced service operations and engage in other anticompetitive behavior. Structural separation is essential to reduce the ability of BOCs to engage in such abuses, to the ultimate benefit of consumers and competition.

If BOCs lacked either control of essential facilities, or a demonstrated propensity to abuse that control, then structural separation would not be required.[4/] As shown below and in the comments of many other parties to this proceeding, the BOCs plainly meet these criteria. The BOCs also have shown a pattern of abuse in every market where they face competition. Thus, the Commission should retain the structural separation requirements adopted in the *Computer II* proceeding and should apply the same requirements to BOC entry into any competitive business.[5/]

II. The Bell Operating Companies Maintain Control of Essential Facilities for the Operation of Enhanced Services Providers.

The first key factor in determining whether the Commission should require structural separation of BOC enhanced service operations is the BOC control of essential

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4/ For instance, under these criteria, structural separation is not warranted for the entry of cable operators into telephony. Cable operators do not control facilities that are essential for another party to enter the telephony market. Therefore, they do not have the ability to engage in anticompetitive practices that BOCs routinely use against independent enhanced services providers.

5/ Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), *Final Decision*, 77 F.C.C.2d 384 (1980) ("*Computer II Order*"), *recon.* 84 F.C.C.2d 50 (1981), *further recon.*, 88 F.C.C.2d 512 (1981), *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

facilities. BOCs not only control these facilities now, but will continue to do so for the foreseeable future.

BOC control of essential facilities for providing enhanced services is obvious; it is impossible to provide telephone-based enhanced services in a BOC's operating territory without using the BOC's local exchange services. This means that an enhanced services provider must use BOC facilities to reach the overwhelming majority of the potential customers in the United States.

The BOCs claim they are not bottlenecks; indeed, this is a significant element of their ongoing nationwide campaign for deregulation. This claim is untrue. The BOCs are the only ubiquitous providers of local telecommunications services. When an enhanced services provider needs to purchase telephone services necessary to offer enhanced services, the only place to go, in BOC territory, is the local BOC. Because local telephone services are absolutely vital to enhanced services providers, it is evident that BOCs have bottleneck control of an essential facility.

Moreover, BOC facilities are, today, the only possible way to reach residential customers. For all intents and purposes, they also are the only way to reach business customers.[6/] This dependence on BOC facilities to reach enhanced services customers is a significant factor in the enhanced services marketplace.

6/ While competitive access providers ("CAPs") have made some inroads in the market for business services, CAPs typically provide high-end, high-capacity services. These services are of little use to mass-market enhanced services providers such as newspapers. The CAP share of the market for POTS or POTS-like services is strikingly small, even in urban centers.

The eventual advent of local competition will not quickly eliminate the BOC bottleneck. The growth of competitive local exchange services will be slow, and those services will not be anywhere near ubiquitous for many years. Until the time that BOCs have ubiquitous local exchange competitors, enhanced services providers still will have to depend on the BOCs for the local exchange services necessary to provide enhanced services.

Once competition becomes ubiquitous, the BOCs will continue to control access to BOC customers. This is important because even the most optimistic scenarios for local competition concede that incumbent carriers will retain the largest share of the local exchange market for many years after all regulatory barriers to local competition are lifted. So long as BOCs remain dominant in the local exchange market, they will have the power that comes with their control over the access to their residential and business customers. Thus, even under the most optimistic assumptions about the regulatory and business environment, the existing BOC bottleneck control of essential facilities will continue for the foreseeable future.

III. The Bell Operating Companies Have Demonstrated that They Abuse Their Monopoly Over Essential Facilities.

By itself, the BOC monopoly over essential facilities would require careful Commission scrutiny because of the risks inherent in any bottleneck monopoly. The actions of the BOCs since the Commission originally lifted its structural separation requirement, however, demonstrate that mere scrutiny is not enough. The BOCs consistently engage in a pattern of anticompetitive behavior that is not restrained by nonstructural safeguards. Because the BOCs both have the power to act anticompetitively and use that power to the

detriment of the enhanced services marketplace, the Commission should reinstitute the structural separation requirements first adopted in the *Computer II* proceeding.[7/]

The BOCs argue that structural separation is unnecessary because they have not abused their market power. *See, e.g.*, Comments of US West at 19; Comments of BellSouth at 13-31. The record shows that this assertion is false. Since the elimination of the structural separation requirement, the BOCs have, almost without exception, engaged in anticompetitive behavior. This behavior continues today.

One of the best-documented examples of BOC abuse is the MemoryCall case, in which Cox participated. While BellSouth and others have attempted to minimize the importance of MemoryCall, even to the point of denying that there were any findings of anticompetitive abuse, it is a prime example of the kind of behavior that persists under nonstructural safeguards.[8/]

MemoryCall is a voice messaging service offered by BellSouth in Georgia and elsewhere. The MemoryCall proceeding arose when BellSouth first began offering this service in Georgia. As described in more detail in Cox's comments on the BOC motion to vacate the MFJ (the "Cox MFJ Comments"), attached as Exhibit 1, when the Georgia Public Service Commission investigated MemoryCall, it discovered a host of anticompetitive abuses. These abuses included BellSouth's refusal to offer services useful to other voice mail providers, discriminatory provisioning of other services, tariff terms that favored BellSouth

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7/ *See Computer II Order*, 77 F.C.C.2d at 457-90.

8/ *See* Comments of BellSouth at 32-51.

over unaffiliated voice messaging providers, and cross-subsidization.[9/] The most egregious practice was BellSouth's effort to switch independent voice messaging provider customers to MemoryCall when those customers called to request services required to use voice messaging, a practice known as "unhooking." *Id.* at 34. These abuses were found by the Georgia Commission following an extensive proceeding that included detailed testimony, discovery and briefing by all parties. Indeed, the MemoryCall proceeding spawned a series of regulatory proceedings, all aimed at policing BellSouth's abuses in the enhanced services market, that continue to this day.

MemoryCall provided a virtual catalog of the ways that a BOC could abuse its market power. By refusing to provide services requested by independent voice messaging providers, BellSouth prevented them from gaining market share while it prepared to enter the market.[10/] BellSouth then adopted an advantageous architecture for its voice messaging service that was technically unavailable to other providers because of the configuration of the BellSouth network. BellSouth's tariff terms for call forwarding services gave MemoryCall a significant marketplace advantage.[11/] BellSouth's apparent cross-subsidy of MemoryCall

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9/ Investigation Into Southern Bell Telephone and Telegraph Company's Provision of MemoryCall Service, *Order of the Commission*, Georgia Docket No. 4000-U (1991). A copy of the Georgia MemoryCall order is included in Exhibit 1.

10/ Not coincidentally, BellSouth first began offering the most crucial service, Call Forwarding-Variable, at the same time it entered the voice messaging market. Call Forwarding-Variable is necessary for any voice messaging system to function efficiently.

11/ The tariff did not permit an independent voice messaging provider to order call forwarding for a customer unless the voice messaging provider was willing to bear the risk of non-payment. BellSouth's MemoryCall operation did not bear this risk because MemoryCall was integrated into BellSouth's basic services operations and customers therefore ordered call forwarding directly from BellSouth from the same customer service representative and at the same time they ordered MemoryCall.

gave it a significant price advantage over independent voice messaging providers. Finally, BellSouth's active abuse of its position as the monopoly provider of basic telephone services by engaging in unhooking meant that BellSouth was able to take customers away from independent voice messaging providers even after the independent providers had made a sale. In effect, BellSouth's use of unhooking meant that the independent providers simply were finding customers for BellSouth.

Georgia was not the only jurisdiction to find abuses in MemoryCall. BellSouth's unhooking first was discovered in Florida. BellSouth promised not to engage in that practice again, a promise it broke in Georgia. This Commission also specifically described unhooking as unlawful, and cited the Georgia Commission's MemoryCall order in support of that conclusion, in the *Computer III Remand Order*.[12/] Thus, BOC suggestions that there never were any findings of abuse in the MemoryCall case are utterly false. *See* Comments of BellSouth at 32-51.

While MemoryCall is a paradigm of BOC abuses, it is not the only example. In Georgia, where Cox has the most experience, there has been repeated evidence that BellSouth abuses its monopoly power to benefit its enhanced services. These abuses are described in detail in the Cox MFJ Comments, attached as Exhibit 1. For instance, the Georgia Commission is now completing a proceeding to consider the results of an audit of BellSouth that found millions of dollars of cross-subsidies between BellSouth's regulated and unregulated services. Similarly, review of BellSouth's Georgia state open network architecture plan showed that BellSouth had priced the few services it unbundled so that the

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12/ Computer III Remand Proceedings, *Report and Order*, 6 FCC Rcd 7571, 7613-4 (1991).

services BellSouth would use had significantly lower margins than the services that only competitors would use.[13/] What is most significant about these abuses is that they are not isolated. Rather, they are a pattern that repeats itself across a wide range of services and through the entire time since the Commission first eliminated the structural separation requirement.

The pattern also repeats itself from BOC to BOC. For instance, Cox's experience in seeking "N11" service from the BOCs speaks volumes about BOC unwillingness to permit, let alone facilitate, the development of enhanced services. Although Cox has requested N11 service from four different BOCs — Ameritech, BellSouth, Southwestern Bell and U S West — only BellSouth has been willing to provide the service, and then only because of significant pressure brought to bear by the Commission. The other BOCs, even after two years of service by BellSouth in Florida, Georgia and elsewhere, still refuse to provide N11 service. This refusal is particularly remarkable because, by all accounts, N11 service has been highly successful, far exceeding BellSouth's own projections for call volume and the number of subscribers. Any service that benefitted only the BOC and had comparable success, such as caller ID, would be widely duplicated and made available nearly ubiquitously. N11 service, which benefits enhanced services providers, has

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13/ Abuses such as this would be made more difficult by structural separation because it would be harder for a BOC's regulated monopoly operations to coordinate their pricing arrangements with personnel in a separate subsidiary.

not.[14/] This is significant evidence that the BOCs continue to use their control of essential facilities to handicap independent enhanced services providers. *See also* Exhibit 1 at 14-30.

Moreover, the BOCs use every mechanism at their disposal to block the progress of enhanced services providers. For example, and as documented at length by MCI, the telephone industry forum process provides an ideal mechanism for the BOCs to obstruct enhanced services providers' efforts to obtain new services they need. *See* Comments of MCI at Exhibit B. Cox's experience is consistent with MCI's. Cox's efforts to obtain a new local abbreviated dialing service, which began nearly three years ago, have yet to reach fruition because of the delays caused by the industry forum process.[15/] It took more than two years to take the issue through a single industry forum, and then consideration by a second forum was required. This second forum has yet to complete its review and, it appears, is far from certain to support a service that is desirable to Cox and other enhanced services providers. The delays in the consideration of abbreviated dialing are all the more remarkable because several of the BOCs have insisted that abbreviated dialing, rather than N11 service, is the proper response to Cox's need for an inexpensive local pay-per-call service.[16/]

14/ The BOC failure to offer N11 service is particularly telling because the Commission formally stated that there are no legal or regulatory impediments to offering N11 service and because the Industry Numbering Committee has rejected other proposed uses for N11 numbers, including using them for access to telecommunications relay service.

15/ Abbreviated dialing would provide a local pay-per-call service as an alternative to N11 service. *See* N11 Codes and Other Abbreviated Dialing Arrangements, *Notice of Proposed Rulemaking*, 7 FCC Rcd 3004 (1992).

16/ *See* Comments of GTE, IAD File No. 94-101, filed August 19, 1994, at 6-7.

BOCs also have demonstrated a pattern of abuse in other areas where they have monopoly control over essential facilities. The most obvious example is cellular interconnection, where the BOCs have imposed interconnection rate structures that are strikingly different from those they use for interconnection with other LECs. Cellular carriers pay rates far in excess of costs, not just for BOC termination of calls from cellular phones, but also for the privilege of terminating calls from the BOC landline networks to their own cellular systems. Despite the Commission's efforts to restrain such unreasonable BOC behavior, these sorts of arrangements continue to be the norm.[17/] BOC interconnection practices directly affect the prices that cellular carriers can charge, and have made it effectively impossible for cellular carriers to compete with landline telephony, even in areas where such competition would make sense. The BOCs could not engage in this behavior unless they had control of essential facilities for the provision of cellular service. Thus, as with enhanced services, BOCs have market power and abuse it. Most recently, the Commission found that BOC tariffs implementing its virtual collocation requirements were unlawful because the rates under those tariffs discriminated against interconnectors.[18/] As in enhanced services and cellular telephony, the BOCs have control over essential facilities for interconnection. Consistent with their actions in other markets, the BOCs abused their control over those facilities, in this case by setting the prices for access to those essential

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17/ *See, e.g., The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2915 (1987) (stating requirement that LECs offer reasonable terms for interconnection). Recently, some BOCs have indicated that they intend to impose similar interconnection rate structures on PCS providers.

18/ Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, *Report and Order*, CC Docket No. 94-97, Phase I (rel. May 11, 1995).